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8

9 **UNITED STATES BANKRUPTCY COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 **SANTA ANA DIVISION**

12 In re Case No. 8:17-bk-10706-SC  
13 JOHN JEAN BRAL, Chapter 11  
14 Debtor. DEBTOR'S OBJECTION TO PROOF OF  
15 CLAIM FILED BY BEITLER &  
ASSOCIATES, INC. dba BEITLER  
16 COMMERCIAL REALTY SERVICES  
[CLAIM NO. 9]; AND MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT  
17 THEREOF  
18 [DECLARATION OF JOHN JEAN BRAL IN  
SUPPORT THEREOF FILED  
19 CONCURRENTLY HEREWITH]  
20 DATE: December 14, 2017  
21 TIME: 11:00 a.m.  
22 Place: Courtroom 5C  
411 West Fourth Street  
Santa Ana, California 92701

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OBJECTION

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1 **TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY  
2 JUDGE, BEITLER & ASSOCIATES, INC. dba BEITLER COMMERCIAL REALTY  
3 SERVICES, AND ALL OTHER INTERESTED PARTIES:**

4       **PLEASE TAKE NOTICE** that, pursuant to 11 U.S.C. § 502, Federal Rule of  
5 Bankruptcy Procedure 3007, and Local Bankruptcy Rule 3007-1, on December 14, 2017,  
6 at 11:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 5C of the  
7 United States Bankruptcy Court, located at 411 West Fourth Street, Santa Ana, California  
8 92701, a hearing will be held concerning this objection (the "Objection") of John Jean Bral,  
9 the debtor and debtor-in-possession in the above-captioned chapter 11 case (the  
10 "Debtor"), to Proof of Claim No. 9 ("Claim No. 9") filed by Beitler & Associates, Inc., dba  
11 Beitler Commercial Realty Services ("BCRS"), an entity wholly-owned by Barry Beitler  
12 ("Beitler").<sup>1</sup>

13       **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 3007-  
14 1(b)(3)(A), any response to the Objection must be filed and served not later than fourteen  
15 (14) days prior to the hearing on the Objection (as further set forth in the Notice served  
16 concurrently herewith).

17       **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 3007-  
18 1(b)(3)(B), if a response is not timely filed and served, the Court may grant the relief  
19 requested in the Objection without further notice or hearing.

20       **PLEASE TAKE FURTHER NOTICE** that the Objection is based on the Notice of  
21 Hearing, the attached Memorandum of Points and Authorities, the concurrently filed  
22 Declaration of John Jean Bral, the files and records of this Court related to the Debtor's  
23 case, and upon such other oral and documentary evidence as may be presented to the  
24 Court at or before the time of the hearing on the Objection.

25 \_\_\_\_\_  
26       <sup>1</sup> Beitler has filed Claim No. 11, asserting substantially the same claims as asserted by BCRS  
27 in Claim No. 9. Concurrently herewith, the Debtor has filed an objection to Claim No. 11 filed by  
Beitler. Such objection is incorporated herein by reference.

1           **WHEREFORE**, the Debtor requests that the Court enter an Order (i) disallowing  
2 Claim No. 9 in its entirety; or, alternatively, (ii) determining the amount of such unsecured  
3 claim on the merits subject to proof in these proceedings and all defenses thereto; and  
4 (iii) for such other and further relief as may be just and proper under the circumstances of  
5 this case.

Respectfully submitted,

Dated: October 13, 2017

# LOBEL WEILAND GOLDEN FRIEDMAN LLP

By: /s/ Beth E. Gaschen

Beth E. Gaschen  
Attorneys for Debtor  
and Debtor-in-Possession  
John Jean Bral

1     I. INTRODUCTION

2                 John Jean Bral, the debtor and debtor-in-possession in the above-captioned  
3 chapter 11 case (the "Debtor"), hereby submits this objection (the "Objection") to Claim  
4 No. 9 filed by Beitler & Associates, Inc., dba Beitler Commercial Realty Services  
5 ("BCRS"), an entity wholly-owned by Barry Beitler ("Beitler"). In support of the Objection,  
6 the Debtor relies on the following Memorandum of Points and Authorities and the  
7 Declaration of John Jean Bral filed concurrently herewith (the "Bral Declaration").

8                 On June 16, 2017, BCRS filed a proof of claim ("Claim No. 9") as an unsecured  
9 claim in an undetermined amount. A true and complete copy of Claim No. 9 is attached  
10 hereto as Exhibit "1" and incorporated herein by this reference.

11                 Prior to 2007, Beitler and the Debtor formed a series of limited liability companies  
12 to acquire and manage commercial real estate projects in Southern California. These  
13 limited liability companies include Westcliff Investors, LLC ("Westcliff"), Ocean View  
14 Medical Investors, LLC ("Ocean View"), Harbor Medical Investors, LLC ("Harbor") and  
15 Mission Medical Investors, LLC ("Mission").

16                 The Debtor also formed Javaher Investors, LLC ("Javaher") and Eyestreet Medical  
17 Investors, LLC ("Eyestreet") which were entities that also owned and managed  
18 commercial real estate projects. The Debtor is the co-manager of Javaher. The Debtor  
19 does not own an interest in Javaher, but Westcliff is a member. The Debtor is the co-  
20 manager of Eyestreet and owns a small membership interest in this entity. Beitler did not  
21 hold an interest in either Javaher or Eyestreet. Westcliff, Ocean View, Harbor, Mission,  
22 Javaher and Eyestreet are collectively referred to as the "SPEs" herein. True and correct  
23 copies of the Operating Agreements that govern the affairs of the SPEs are attached to  
24 the Bral Declaration as Exhibits "1" through "6."

25                 After the formation of the SPEs, these entities required management services, and  
26 brokerage services such as leasing and lease renewal. In 2006, the Debtor formed  
27 Venture RE Group, a California corporation ("VREG"), which performed such services for  
28 the SPEs. VREG is owned 50% by the Debtor and (contrary to the allegations in the

1 Claim) 50% by Beitler. In October 2013, the Debtor formed Bral Realty Advisors, Inc., a  
2 California corporation ("BRAI"). Beitler & Associates is a California corporation owned by  
3 Beitler that operated under the dba BCRS.

4 The Ocean, Javaher, Mission and Harbor operating agreements state that BCRS is  
5 entitled to receive commissions for sales and leasing work performed for these entities.  
6 The Westcliff operating agreement states that BCRS and the Debtor will split sales and  
7 leasing commissions. The Eyestreet operating agreement states that VREG will receive  
8 sales and leasing commissions.

9 In Claim No. 9, BCRS alleges that Beitler and the Debtor entered into the following  
10 oral agreements relating to the management of the SPEs' business:

- 11 A. VREG would provide management services to the SPEs and the  
12 revenues would from these services would be split equally between  
13 Beitler and the Debtor (the "VREG Management Agreement");
- 14 B. Beitler would park his real estate license with VREG to enable VREG to  
15 provide leasing services to the SPEs, and Beitler and the Debtor would  
16 then split the commissions equally (the "VREG Broker Agreement");  
17 and
- 18 C. Beitler would allow the Debtor to take Beitler's share of the VREG's  
19 revenues for a period of time and then the Debtor would repay these  
20 deferred fees (the "Deferral Agreement") (collectively, the  
21 "Agreements").

22 According to the Claim, the Debtor breached the Agreements by either  
23 appropriating or failing to repay Beitler's share of the management fees and commissions.  
24 As set forth in the Bral Declaration and herein, the Debtor disputes these allegations.

25 As a preliminary matter, however, BCRS has failed to establish a *prima facie* case  
26 for allowance of Claim No. 9, and such Claim should be disallowed in its entirety on the  
27 grounds that it is vague, ambiguous, contradictory and unsupported by evidence. In  
28 addition, BCRS has failed to demonstrate standing to bring the Claim, and the Claim is

1 barred by the statute of limitations and by the doctrine of laches. Moreover, even  
2 assuming that such Claim is not disallowed in its entirety based on the foregoing, and the  
3 merits of such Claim were to be considered by this Court, the Debtor denies the  
4 allegations underlying Claim No. 9.

5 To the extent that Claim No. 9 is not disallowed in its entirety for the reasons set  
6 forth herein, and the merits of such Claim were to be considered, the Debtor believes that  
7 he would be successful on the issue of liability on the merits by way of the proceeding on  
8 this Objection.<sup>2</sup> Claim No. 9 is filed in an undermined amount, subject to proof by BCRS  
9 and is based solely on BCRS' assertions set forth in Claim No. 9 (which is without any  
10 supporting specificity or evidence). The Claim does not take into consideration any of the  
11 Debtor's defenses to the asserted liability which, if the merits are to be considered, must  
12 be considered in connection with the allowability of any such Claim.

13 **II. STATEMENT OF FACTS**

14 **A. Jurisdiction and Venue**

15 This Court has jurisdiction to consider this Objection under 28 U.S.C. §§ 157 and  
16 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The Debtor consents to the  
17 entry of a final order by the Court in connection with this Objection to the extent it is later  
18 determined that the Court, absent consent of the parties, cannot enter final orders or  
19 judgments consistent with Article III of the United States Constitution. Venue of this case  
20 and this Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409.

21 **B. Relief Requested**

22 By this Objection, the Debtor seeks entry of an order pursuant to section 502(b) of  
23 the Bankruptcy Code and Bankruptcy Rule 3007 (i) disallowing Claim No. 9 in its entirety;  
24 or, alternatively, (ii) determining the amount of such unsecured claim on the merits subject

26 \_\_\_\_\_  
27 <sup>2</sup> By filing Claim No. 9, BCRS has subjected itself to this Court's jurisdiction to determine the  
amount and allowability of its asserted claim against the Debtor.  
28

1 to proof in these proceedings and defenses thereto; and (iii) for such other and further  
2 relief as may be just and proper under the circumstances of this case.

3       **C.     The Debtor and the Chapter 11 Filing**

4           The Debtor commenced this case by filing a voluntary petition under chapter 11 of  
5 title 11 of the United States Code on February 24, 2017 (the "Petition Date"). The Debtor  
6 continues to manage his financial affairs and operate his bankruptcy estate as a debtor-in-  
7 possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No request for  
8 the appointment of a trustee or examiner has been made in this case. No official  
9 committee of unsecured creditors has been appointed in this case.

10       **D.     The Bar Date and the Claim**

11           This Court set a deadline of June 16, 2017 as the bar date for filing claims (the  
12 "Claims Bar Date"). On April 21, 2017, the Debtor served all known creditors and parties-  
13 in-interest with notice of the Claims Bar Date (the "Bar Date Notice") [Docket No. 47].  
14 Pursuant to the Bar Date Notice, each creditor, subject to certain limited exceptions,  
15 holding a claim against the Debtor was required to file a proof of claim on or before the  
16 Claims Bar Date. On June 16, 2017, BCRS filed Claim No. 9 as an unsecured claim in an  
17 undetermined amount.

18       **III.    ANALYSIS**

19       **A.     The Standard for Allowance of Claims**

20           Pursuant to Federal Rule of Bankruptcy Procedure 3001(f) and section 502(a), a  
21 timely filed and properly documented proof of claim is deemed *prima facie* valid.  
22 Bankruptcy Code § 502(b)(1) provides that a claim will not be allowed to the extent that  
23 the claim is for "an unenforceable debt against a debtor and property of the debtor, under  
24 any agreement or applicable law for a reason other than because such claim is contingent  
25 or unmatured . . ."

26           "[T]he burden of initially going forward with the evidence as to the validity and the  
27 amount of the claim is that of the objector to that claim. 3 L. King, COLLIER ON  
28 BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991). Once "the objector produces sufficient

1 evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts  
2 to the claimant to prove the validity of the claim by a preponderance of the evidence." In  
3 re Consol. Pioneer, 178 B.R. 222, 226 (9th Cir. BAP 1995) (quoting In re Allegheny Int'l.  
4 Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)). The ultimate burden of persuasion remains at  
5 all times upon the claimant. Lundell v. Anchor Const. Specialists, Inc., 223 F.3d 1035,  
6 1039 (9th Cir. 2000); In re Holm, 931 F.2d 620, 623 (9th Cir. 1991); In re Gray, 522 B.R.  
7 619, 625 (Bankr. D. Idaho 2014) ("If the objector produces evidence sufficient to negate  
8 the validity of the claim, the ultimate burden of persuasion remains on the claimant to  
9 demonstrate by preponderance of the evidence that the claim deserves to share in the  
10 distribution of the debtor's assets."); Spencer v. Pugh (In re Pugh), 157 B.R. 898, 901 (9th  
11 Cir. BAP 1993); In re Parrott Broadcasting Ltd. P'ship, 492 B.R. 35, 38 (Bankr. D. Idaho  
12 2013); In re Blixeth, 489 B.R. 154 (Bankr. D. Mo. 2013) (once objecting party succeeds in  
13 overcoming prima facie effect of procedurally proper proof of claim, burden shifts to  
14 claimant to prove validity of its claim, and claimant must satisfy that burden by  
15 preponderance of evidence). See also Pepper v. Litton, 308 U.S. 295, 304, 60 S.Ct. 244  
16 (1939) (stating that the bankruptcy court has the power to shift the circumstances  
17 surrounding any claim to see that injustice or unfairness is not done in administering the  
18 bankruptcy estate).

19 In this case, the Claim at issue is so vague, ambiguous, contradictory<sup>3</sup> and  
20 unsupported by any evidence that it is not entitled to the presumption of validity. See In re  
21 Campbell, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005). However, even if this presumption  
22 was applicable, the Debtor would submit that it is has been overcome by the evidence and  
23 legal authorities cited herein. Accordingly, the Debtor seeks entry of an Order granting  
24 the Objection.

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27 <sup>3</sup> For example, both BCRS and Beitler are asserting claims of damage for the same acts.  
28

1           **B. The Claim Does Not Satisfy the Standing Requirement**

2           In Claim No. 11, Beitler seeks recompense for the same purported damages  
3 alleged in the Claim filed by BCRS. Since neither Beitler nor BCRS have alleged joint  
4 ownership of either claim, one of these parties is asserting a claim it does not hold. This  
5 gives rise to a fatal standing defect. Valley Forge Christian Coll. v. Ams. United for  
6 Separation of Church & State, Inc., 454 U.S. 464, 474-75, 102 S.Ct. 752, 70 L.Ed.2d 700  
7 (1982) (holding that "the plaintiff generally must assert his own legal rights and interests,  
8 and cannot rest his claim to relief on the legal rights or interests of third parties."). To the  
9 extent that Beitler and BCRS have a rational basis for allocating ownership of the  
10 damages alleged in these claims, it has not been set forth in either claim, which justifies  
11 the disallowance of both. See In re Campbell, 336 B.R. 430, 436 (B.A.P. 9th Cir. 2005).

12           **C. Any Claim Based on the Agreements is Barred by the Statutes of**  
13           **Limitations**

14           BCRS fails to specify in the Claim what commissions or fees were not paid to it as  
15 allegedly agreed, or when this supposedly occurred. However, since all of the SPEs and  
16 VREG were formed before 2007,<sup>4</sup> the statute of limitation would have run at least by the  
17 end of the first year during which these payments were not made, which was presumably  
18 2007. Since the alleged Agreements were oral contracts, any claim thereunder is now  
19 barred by the two-year statute of limitations under Cal. Code Civ. Proc. § 339 (two-year  
20 statute of limitations). To the extent the foregoing breach of contract claims were framed  
21 as breach of fiduciary duty claims, they would still be barred by the three or four-year  
22 statute of limitations applicable to such claims. To the extent that the foregoing breach is  
23 framed as a breach of fiduciary duty claim, it would still be time barred. Am. Master Lease  
24 LLC v. Idanta Partners, Ltd., 225 Cal. App. 4th 1451, 1479, 171 Cal. Rptr. 3d 548, 570

25 \_\_\_\_\_  
26           <sup>4</sup> Javaher was formed in 2005, Mission was formed in 2003, Harbor was formed in 2006,  
27 Eyestreet was formed in 2006, Ocean View was formed in 2006, and Westcliff was formed in  
2003.

1 (2014), as modified (May 27, 2014)  
2 ("The statute of limitations for breach of fiduciary duty is three years or four years,  
3 depending on whether the breach is fraudulent or nonfraudulent."); Fuller v. First Franklin  
4 Financial Corp., 216 Cal.App.4th 955, 963, 163 Cal.Rptr.3d 44 (2013) ("[L]imitations  
5 period is three years ... for a cause of action for breach of fiduciary duty where the  
6 gravamen of the claim is deceit, rather than the catchall four-year limitations period that  
7 would otherwise apply"); William L. Lyon & Associates, Inc. v. Superior Court, 204  
8 Cal.App.4th 1294, 1312, 139 Cal.Rptr.3d 670 (2012) ("Breach of fiduciary duty not  
9 amounting to fraud or constructive fraud is subject to the four-year 'catch-all statute' of  
10 Code of Civil Procedure section 343."). Such claims, therefore, are barred.

11       D. **BCRS' Claims are Barred by the Doctrine of Laches**

12       The defense of laches is derived from the maxim that "[t]he law helps the vigilant,  
13 before those who sleep on their rights." Cal. Civ. Code § 3527. Stated otherwise,  
14 "[e]quity frowns upon stale demands [and] declines to aid those who have slept on their  
15 rights." Latta v. Western Inv. Co., 173 F.2d 99, 107 (1949). A defendant must  
16 demonstrate three elements to successfully assert a laches defense: (1) delay in asserting  
17 a right or a claim; (2) the delay was not reasonable or excusable; and (3) the prejudice  
18 resulting from the delay. Magic Kitchen LLC v. Good Things Int'l Ltd., 153 Cal. App. 4th  
19 1144, 1157, 63 Cal. Rptr. 3d 713, 723–24 (2007); Miller v. Glenn Miller Productions,  
20 Inc., 454 F.3d 975, 997 (9th Cir.2006).

21       The first element of laches is delay, as measured by the period "from when the  
22 plaintiff knew (or should have known) of the allegedly infringing conduct, until the initiation  
23 of the lawsuit in which the defendant seeks to counterpose the laches defense." Magic  
24 Kitchen, 153 Cal. App. 4th 1144, 1157, citing Danjaq LLC v. Sony Corp., 263 F.3d 942,  
25 952 (9th Cir. 2001). Since Beitler (the owner of BCRS) was the co-managing member of  
26 every SPE, except Javaher and Eyestreet, and since his personal accountant prepared  
27 the tax returns for approximately 10 years, Beitler (and thereby BCRS) knew or should  
28 have known that commissions and management fees were being paid and whether or not

1 it was receiving its appropriate share of these payments. Given this knowledge, the delay  
2 in this case was clearly not reasonable. Failing to file an action after one year might be  
3 "reasonable," but not after two or more years.

4       The prejudice element is also satisfied. The Debtor was being paid for services  
5 that he, not BCRS performed, and he was being paid what he believed he was owed.  
6 Had BCRS raised its claim in a timely manner, the Debtor would have had the option of  
7 declining to perform the services for "half price" and instead could have allocated his  
8 resources to other more lucrative pursuits. He also would not be facing the substantial  
9 purported claim that BCRS (and Beitler) are now asserting. On these facts, BRCS' claims  
10 should be deemed barred.

11           **E. If Not Disallowed, the Claim Should Be Determined on its Merits and**  
12           **Beitler's Allegations are False**

13       Claim No. 9 is based solely on BCRS' assertions of damages, without any  
14 consideration of the Debtor's defenses thereto. To the extent not disallowed for the  
15 reasons set forth hereinabove, Claim No. 9, should be determined by this Court in  
16 accordance with proof.

17       In this regard, as set forth in the Bral Declaration filed concurrently herewith, the  
18 allegations that form the basis of Claim No. 9 (and Claim No. 11 filed by Beitler) are false.

19       In the Claims, Beitler/BCRS alleges that the Debtor agreed that Beitler would  
20 receive fifty percent (50%) of the top line revenues generated by VREG. This is false. In  
21 fact, the Debtor and Beitler agreed that the Debtor, as VREG's active and working  
22 corporate officer and the sales manager within VREG, would receive sixty percent (60%)  
23 of every commission paid to VREG on transactions that the Debtor worked on as an  
24 agent. The remaining forty percent (40%) of the commission would be retained by VREG.  
25 Beitler, as a fifty percent (50%) shareholder of VREG, would then receive fifty percent  
26 (50%) of the year end profit generated by VREG and the Debtor, as the other fifty percent  
27 (50%) shareholder, would receive the balance of the profit.

1       Contrary to Beitler/BCRS' allegations in the Claims, the management fees and  
2 leasing commissions that were paid to VREG and BRAI by the SPEs (the "Service  
3 Payments") were duly authorized, and they were payable for ordinary and necessary  
4 services. These payments were reflected in the SPEs' books and records and in their tax  
5 returns.

6           Pursuant to the Debtor's agreement with Beitler, VREG received one hundred  
7 percent (100%) of the commissions generated from leasing activity performed for the  
8 benefit of the SPEs, with the exception of Westcliff lease commissions. In the case of  
9 Westcliff, forty percent (40%) of the commissions were allocable to Beitler and were  
10 retained by Westcliff.

11          As explained above, the Debtor was allocated sixty percent (60%) of the  
12 commissions paid to VREG by the SPEs. The remaining forty percent (40%) was retained  
13 by VREG. If, after paying corporate expenses, a profit was left over in the corporation,  
14 Beitler, as a fifty percent (50%) shareholder of VREG, would receive half of this profit.  
15 The Debtor never agreed to split the commissions with Beitler/BCRS fifty/fifty as alleged in  
16 the Claims.

17          When property management fees were paid by the SPEs to VREG, these  
18 payments would be used to pay ordinary course expenses and again, at the end of the  
19 year, Beitler, as a fifty percent (50%) shareholder of VREG, would receive his half of the  
20 profits.

21          In the Claim, BCRS (and in Claim No. 11, Beitler), generically allege that some of  
22 the Service Payments were improper or, alternatively, and in contradiction of the prior  
23 allegation, that they were proper, but Beitler/BCRS did not receive his/its "share" of these  
24 payments as agreed.

25          It bears noting that the Service Payments were paid over a period of more than *ten*  
26 years. A general allegation that "some" of the payments were not proper or authorized is  
27 difficult for the Debtor to respond to since these allegations encompass thousands of  
28 payments that were made by eight separate entities.

1       Moreover, during the decade plus time frame Beitler encompassed by Beitler's and  
2 BCRS' allegations, Beitler/BCRS were fully aware of the payments, and in fact such  
3 issues were routinely discussed with Beitler.

4       Since Beitler/BCRS have failed to specify what payments during the past decade  
5 were allegedly improper or unauthorized, the Debtor cannot specifically address these  
6 allegations at this juncture. However, as set forth in the Bral Declaration, to the best of  
7 the Debtor's recollection and knowledge, however, such payments were in fact proper and  
8 authorized, and Beitler was always aware that these payments were being made.

9       If and when either Beitler and/or BCRS specify what payments they are referring to,  
10 and why they were improper or unauthorized, the Debtor will review the applicable books  
11 and records and address and rebut these contentions in more detail. The Debtor has  
12 every confidence that these records will rebut these allegations.

13 **IV. RESERVATION OF RIGHTS**

14       This Objection is limited to the grounds stated herein. Accordingly, it is without  
15 prejudice to the right of the Debtor to object to Claim No. 9 on any other ground  
16 whatsoever, and the Debtor expressly reserves all further substantive and/or procedural  
17 objections he may have.

18 **V. CONCLUSION**

19       BCRS's Claim No. 9 is vague, ambiguous, contradictory and unsupported. It  
20 should be disallowed in its entirety on this basis alone. To the extent that BCRS is  
21 allowed to supplement its Claim to avoid disallowance, BCRS should be compelled to  
22 specify the payments that it did not receive and which entity or individual is the purported  
23 non-payer and why these claims are not barred by the statute of limitations and the  
24 doctrine of laches. If and when BCRS provides this minimum level of specificity, the  
25 Debtor will review the claims, research the facts and fully respond thereto.

26       Accordingly, for the reasons stated herein, the Debtor moves this Court for an order  
27 ((i) disallowing Claim No. 9 in its entirety; or, alternatively, (ii) determining the amount of  
28 such unsecured claim on the merits subject to proof in these proceedings and defenses

1 thereto; and (iii) for such other and further relief as may be just and proper under the  
2 circumstances of this case.

3 Respectfully submitted,

4 Dated: October 13, 2017

LOBEL WEILAND GOLDEN FRIEDMAN LLP

5

6

By: /s/ Beth E. Gaschen  
WILLIAM N. LOBEL  
ALAN J. FRIEDMAN  
BETH E. GASCHEN  
Attorneys for Debtor and  
Debtor-in-Possession

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# **EXHIBIT "1"**

Fill in this information to identify the case:

Debtor 1	JOHN JEAN BRAL
Debtor 2 (Spouse, if filing)	
United States Bankruptcy Court for the: Central District of California	
Case number 8:17-BK-10706-SC	

## Official Form 410

### Proof of Claim

4/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

#### Part 1: Identify the Claim

1. Who is the current creditor?	Beitler & Associated, Inc. dba Beitler Commercial Realty Services <small>Name of the current creditor (the person or entity to be paid for this claim)</small>		
	Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent?  <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	Where should notices to the creditor be sent?  Name 10250 Constellation Blvd., Suite 1700 Number Street Los Angeles CA 90067 City State ZIP Code Contact phone (310) 229-1234 Contact email GEK@LNBYB.COM	Where should payments to the creditor be sent? (if different)  Name 825 Barrington Avenue Number Street Los Angeles CA 90048 City State ZIP Code Contact phone _____ Contact email bbeitler@beitler.com	
Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----			
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on <small>MM / DD / YYYY</small>		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ To be determined. Does this amount include interest or other charges?  No  Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.

**Claims in Case No. BC 543410 in Los Angeles County Superior Court**

9. Is all or part of the claim secured?  No  Yes. The claim is secured by a lien on property.

**Nature of property:**

- Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_

**Basis for perfection:**

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** \$ \_\_\_\_\_

**Amount of the claim that is secured:** \$ \_\_\_\_\_

**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_

**Annual Interest Rate (when case was filed)** \_\_\_\_\_ %

- Fixed  
 Variable

10. Is this claim based on a lease?  No  Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No	Amount entitled to priority _____
	<input type="checkbox"/> Yes. Check all that apply:	
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(_) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

### Part 3: Sign Below

The person completing this proof of claim must sign and date it.  
**FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.  
 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 06/15/2017

Signature

Print the name of the person who is completing and signing this claim:

Name	Barry Beitler		
	First name	Middle name	Last name
Title	Authorized Agent		
Company	Beitler & Associates, Inc. dba Beitler Commercial Realty Services		
Identify the corporate servicer as the company if the authorized agent is a servicer.			
Address	825 Barrington Avenue		
	Number	Street	
	Los Angeles	CA	90049
	City	State	ZIP Code
Contact phone	<u>bbeitler@beitler.com</u>		

**ATTACHMENT TO PROOF OF CLAIM OF BEITLER & ASSOCIATES, INC. dba  
BEITLER COMMERCIAL REALTY SERVICES BASED ON CLAIMS ALLEGED IN  
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 543410**

On April 21, 2014, Barry Beitler (“Beitler”) and Beitler & Associates, Inc. dba Beitler Commercial Realty Services (“BCRS” or “Claimant”) filed an action against, among others, John Bral (“Bral”) in Los Angeles County Superior Court, Case No. BC 543410. A copy of the Complaint that Beitler filed in that action is attached hereto as Exhibit “A”.

As set forth in the Complaint, BCRS alleged various claims for damages against Bral for unjust enrichment, intentional misrepresentation, negligent misrepresentation, breach of oral contract and breach of implied contract. These claims are based on, among other things, allegations that:

- Beitler and Bral formed several specific purpose entities as limited liability companies (collectively, “SPEs”) to hold, operate and manage real property investments in which they each held a membership interest.
- The SPEs’ operating agreements controlled whether, to whom and under what circumstances the SPEs could pay commissions and property management fees with respect to the real properties.
- Beitler and Bral agreed to form Venture RE Group (“Venture”) to act as a development company for the SPEs, with Beitler and Bral holding equal ownership interests in Venture.
- Beitler and Bral also agreed that (i) Venture would provide property management services to the SPEs, (ii) Beitler and Bral would equally divide all of Venture’s revenues, (iii) Beitler would place his real estate broker’s license with Venture, (iv) Venture would operate as an affiliate of BCRS, which was the authorized broker named in the SPE operating agreements, and (v) while BCRS would remain the broker for the SPEs, commissions from lease and sale transactions brokered by Venture would be split equally between BCRS and Venture.
- Notwithstanding these agreements, Bral, among other things, (a) formed and operated Venture without providing for Beitler to receive his interest therein, (b) failed to share Venture’s revenues with Beitler, (c) without Beitler’s or the SPEs’ authorization, diverted Venture’s business to an entity Bral created, Bral Realty Advisors, Inc. (“BRAI”), and (d) retained, directly or through BRAI or Venture, management fees and commissions payable to Beitler and/or BCRS.
- Bral also breached his agreement to reimburse BCRS for advances that BCRS made to or on behalf of Bral, Venture or agents acting under Venture for their expenses, including without limitation payments for errors and omissions insurance.

The case remains pending in Los Angeles County Superior Court but has been stayed as a result of this bankruptcy case. BCRS’ pending adversary action herein, Adversary No. 8:17-ap-01094, is based in part on allegations raised in the foregoing state court action.

The damages and other relief recoverable by BCRS in the state court case remain subject to proof, as Bral, Venture and BRAI control, among other things, the information concerning management fees and commissions they received that were payable to Beitler and BCRS. On February 23, 2017, the day before Bral filed this bankruptcy case, the discovery referee in the state court action issued a Report and Recommendation, a copy of which is attached hereto as Exhibit "B", recommending that the Superior Court order Bral to produce (a) QuickBooks data in native format and (b) tax returns for Venture and BRAI within 10 days, with the Court to consider imposing terminating sanctions if Bral does not timely comply. Due to the bankruptcy stay, the Superior Court has not yet entered an order on the referee's recommendation.

**Reservation of Rights**

Claimant reserves the right to (i) amend, update and/or supplement this Proof of Claim at any time and in any respect, (ii) file additional proofs of claim for additional claims which may be based on the same or additional documents or other liability or indebtedness of the Debtor to Claimant (iii) file a request for payment of administrative expenses in accordance with 11 U.S.C. §§ 503 and 507.

In addition to the foregoing, Claimant reserves all rights with respect to (a) any indebtedness owed to Claimant by any non-debtor affiliate or other entity related to the Debtor, and (b) any other amounts that may be owing to Claimant in respect of interest, fees, indemnities, costs and expenses to the extent permitted by applicable law.

Nothing contained in this Proof of Claim shall be construed as limiting Claimants rights, remedies and interests.

The filing of this proof of claim is not: (i) a waiver or release of Claimant's rights against any person, entity or property; (ii) a waiver of the right to move to withdraw the reference, or otherwise to challenge the jurisdiction of this Court, with respect to the subject matter of this Proof of Claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving this Proof of Claim, or to assert that the reference has already been withdrawn with respect to the subject matter of this claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving this Proof of Claim; (iii) an election of remedy; or (iv) a waiver of any past, present or future defaults or events of default. Claimant specifically preserves all of Claimant's procedural and substantive defenses and rights with respect to any claim that may be asserted against Claimant by the Debtor or any of its debtor or non-debtor affiliates, or by any trustee for this estate.

# EXHIBIT A

1 LEVY, SMALL & LALLAS  
2 A Partnership Including Professional Corporations  
3 TOM LALLAS (SBN 66512)  
4 815 Moraga Drive  
5 Los Angeles, California 90049-1633  
6 Telephone: (310) 471-3000  
7 Facsimile: (310) 471-7990

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

APR 21 2014

Sherri R. Carter, Executive Officer/Clerk.  
By Shaunya Bolden, Deputy

5 Attorneys for Plaintiffs  
6 BARRY A. BEITLER and  
7 BEITLER & ASSOCIATES, INC.,  
doing business as  
Beitler Commercial Realty Services

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

FILED BY FAX

10

11 BARRY A. BEITLER, an individual, and  
12 BEITLER & ASSOCIATES, INC., a California  
corporation doing business as Beitler Commercial  
13 Realty Services,

Plaintiffs,

14 vs.

15 JOHN BRAL, an individual; VENTURE RE  
16 GROUP, a California corporation; BRAL  
17 REALTY ADVISORS, INC., a California  
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.

BC 543410

COMPLAINT FOR:

- 1) BREACH OF FIDUCIARY DUTY
- 2) ACCOUNTING
- 3) UNJUST ENRICHMENT
- 4) INTENTIONAL MISREPRESENTATION
- 5) NEGIGENT MISREPRESENTATION
- 6) BREACH OF ORAL CONTRACT
- 7) BREACH OF IMPLIED CONTRACT

1 Plaintiffs Barry A. Beitler, an individual ("Beitler") and Beitler & Associates, Inc., a  
2 California corporation doing business as Beitler Commercial Realty Services ("BCRS")  
3 [collectively, "Plaintiffs"], allege as follows:

4 **I. PARTIES AND JURISDICTION.**

5 1. Beitler is now, and all times material hereto has been, a resident of, and doing  
6 business in, the County of Los Angeles, State of California.

7 2. BCRS is now, and all times material hereto has been, a corporation in good standing  
8 formed under the laws of the State of California. BCRS's principal business office is now, and  
9 all times material hereto has been, located in the County of Los Angeles, State of California.

10 3. Defendant John Bral ("Bral") is now, and at all times material hereto has been, an  
11 individual doing business in the County of Los Angeles, State of California.

12 4. Defendant Venture RE Group ("VREG") is now, and all times material hereto has  
13 been, a corporation in good standing formed under the laws of the State of California. Plaintiffs  
14 are informed and believe, and based on such information and belief allege, that the Articles of  
15 Incorporation for VREG were filed with the Secretary of State of California on or about May 10,  
16 2006. VREG's principal business office is now, and all times material hereto has been, located  
17 in the County of Orange, State of California.

18 5. Defendant Bral Realty Advisors, Inc. ("BRAI") is now, and all times material hereto  
19 has been, a corporation in good standing formed under the laws of the State of California.  
20 Plaintiffs are informed and believe, and based on such information and belief allege, that the  
21 Articles of Incorporation for BRAI were filed with the Secretary of State of California on or  
22 about October 8, 2013. BRAI's principal business office is now, and all times material hereto  
23 has been, located in the County of Orange, State of California.

24 6. Plaintiffs do not know the true names or capacities of the persons or entities sued  
25 herein as Does 1 through 50, inclusive, and therefore sue these Defendants by such fictitious  
26 names. Plaintiffs are informed and believe, and upon such information and belief allege, that  
27 each of the Doe Defendants was in some manner legally responsible for the damages alleged  
28

1 below. Plaintiffs will amend this Complaint to set forth the true names of capacities of these  
2 Defendants when they have been ascertained.

3 7. Bral, VREG, BRAI and Does 1 – 50, inclusive, shall be collectively referred to as  
4 “Defendants”.

5 8. Plaintiffs are informed and believes, and based on such information and belief  
6 allege, that at all times herein mentioned, each Defendant was the agent, servant, or employee of  
7 the other Defendants and in acting or omitting to act as alleged herein did so within the course  
8 and scope of that agency or employment. Each Defendant is sued individually and as an agent  
9 and representative of each of the Defendants.

10 9. Plaintiffs are informed and believes, and based on such information and belief  
11 allege, that all of the agreements at issue in this Action, whether written or oral, were made and  
12 agreed by the respective parties thereto in the County of Los Angeles.

13 II. FACTS

14 10. Beitler and Bral formed several specific purpose entities as limited liability  
15 companies (collectively, “SPEs”) to hold, operate and manage real property investments in  
16 which they each held a membership interest.

17 11. The SPEs of Beitler and Bral included, among others, Mission Medical Investors,  
18 LLC (“Mission”), Javaher Investors, LLC (“Javaher”), Ocean View Medical Investors, LLC  
19 (“Ocean”), Harbor Medical Investors, LLC (“Harbor”), Eyestreet Medical Investors, LLC  
20 (“Eye”), and Westcliff Investors, LLC (“Westcliff”).

21 12. Westcliff was formed in February 2003.

22 13. Mission was formed in December 2003.

23 14. Javaher was formed in May 2005.

24 15. Ocean was formed in June 2005.

25 16. Harbor was formed in May 2006.

26 17. Eye was formed in October 2006.

27 18. Plaintiffs are informed and believe, and based on such information and belief  
28 allege, that Beitler and Bral have executed the operating agreements of each of the SPEs.

1 Plaintiffs are further informed and believe and thereon allege that Bral has in his possession and  
2 control all of the executed operating agreements of Mission, Javaher, Ocean, Harbor and Eye.

3 19. Beitler and Bral are managers of Ocean, Harbor and Mission.

4 20. Bral and Dr. Hootan Daneshmand are managers of Javaher and Eye.

5 21. Plaintiffs are informed and believe, and based on such information and belief  
6 thereon allege, that in each of the SPEs in which both Beitler and Bral are a manager or a  
7 managing member, neither Beitler nor Bral is permitted to act unilaterally or independently of  
8 each other as Manager or Managing Member, as the case may be, and that the operating  
9 agreements of those SPEs require the mutual consent of each manager or managing member.

10 22. Section 5.9 C. of the Operating Agreements of Ocean, Mission, Javaher and  
11 Harbor provides for payment of property management fees:

12 "There shall be a four percent (4%) of gross income per month fee for property  
13 management to a management company chosen by Manager."

14

15 23. Section 5.9 D. of the Operating Agreements of Ocean, Mission, Javaher, and  
16 Harbor provides for payment to BCRS of sale and leasing broker commissions:

17 "There shall be sales commission of four percent (4%) paid to Beitler Commercial Realty  
18 Services as a listing Broker upon sale .... and leasing commissions shall be paid to Beitler  
19 Commercial Realty Services...."

20

21 24. Section 5.8 of the Eye Operating Agreement, which was executed after VREG  
22 was formed, provides for VREG to act as property manager and sales and leasing broker:

23 " ... The Company specifically acknowledges that JOHN BRAL is a Manager and is  
24 affiliated with Venture RE Group. The Company specifically acknowledges and hires Venture  
25 RE Group as leasing and/or listing Broker, when necessary to lease or sell the property, and will  
26 pay to Venture RE Group the "Sales Commission" and "Lease Commissions" ... Further, the  
27 Company hires Venture RE Group to act as property manager for the Company and its assets and  
28 will pay to Venture RE Group the "Property Management Fee"... The Company specifically

1 acknowledges that Manager or Manager's affiliate shall manage and oversee the construction,  
2 development and construction of the tenant improvements ... upon the Property, and the  
3 Company shall pay to Manager or Manager's affiliate the "Development and Construction  
4 Management Fee"..."

5  
6 25. Section 5.9 C of the Eye Operating Agreement provides for payment of property  
7 management fees to VREG:

8 "There shall be a four percent (4%) of gross income per month fee ... for property  
9 management paid to Venture RE Group...."

10  
11 26. Section 5.9 D of the Eye Operating Agreement provides for payment of sale and  
12 leasing broker commissions to VREG:

13 "There shall be sales commission of four percent (4%) paid to Venture RE Group ... as a  
14 listing Broker upon sale .... and leasing commissions shall be paid to Venture RE Group ...."

15  
16 27. Section 3.3 in the Westcliff Operating Agreement provides for BCRS to act as  
17 broker and for sale and leasing commissions to be split equally between Beitler and Bral:

18 "At all times, whenever a vacancy in the property becomes available, Beitler Commercial  
19 Realty Services shall be hired for the leasing at market commission rates. Bral and Beitler agreed  
20 to split equally (50%/50%) any and all commissions for leasing paid if any. The same shall be  
21 true of any commission on the future sale of the Property...."

22  
23 28. Plaintiffs are informed and believe, and based on such information and belief  
24 allege, that the Westcliff Operating Agreement does not provide for the appointment of a  
25 property manager.

26 29. Notwithstanding that an operating agreement of any of the SPEs may have  
27 granted to the manager or managing member the authority to select a property manager (Ocean,  
28 Mission, Javaher and Harbor), or otherwise provided for the appointment of a property manager

1 (Eye), it was agreed to and understood between Beitler and Bral that in each of the SPEs  
2 property management fees would be split between them and that the property management  
3 would be conducted through an entity owned and controlled by both of them (the "SPE  
4 Management Agreement"). Plaintiffs are informed and believe, and based on such information  
5 and belief allege, that the SPE Management Agreement amended each respective SPE operating  
6 agreement.

7 30. In or around May 2006, Beitler and Bral formed VREG. Its business purpose was  
8 to serve as a development company for their SPEs and any subsequently acquired real property  
9 to be developed.

10 31. At the time that they formed VREG, Beitler and Bral orally agreed to the  
11 following material terms with regard to VREG (collectively, "Initial VREG Agreement"):

- 12 A. Each would own an equal stock interest in VREG;  
13 B. There would be no other shareholders in VREG;  
14 C. Beitler and Bral would be the only officers and directors of VREG; and  
15 D. VREG would only be used for its intended business purpose.

16 32. Subsequently, Beitler and Bral orally agreed to use VREG as a property  
17 management company for their SPEs. Beitler and Bral orally agreed to add to their Initial VREG  
18 Agreement the following additional terms (collectively, "VREG Property Management  
19 Agreement"):

- 20 A. Bral shall handle the day to day administrative management related to each of the  
21 SPEs, but not supersede, conflict, or be delegated as property manager, any of the  
22 authority of a Manager of any of the SPEs;  
23 B. Other than property management services and property development services,  
24 VREG shall not provide any other service; and  
25 C. Beitler and Bral are to divide equally between them all revenues earned by  
26 VREG.

27

28

1           33. The VREG Property Management Agreement was an extension of the Initial  
2 VREG Agreement, incorporating the terms of the Initial VREG Agreement between Beitler and  
3 Bral.

4           34. Plaintiffs are informed and believe, and based on such information and belief  
5 allege, that Bral was the incorporator, or caused the incorporation, of VREG, and at all times  
6 material herein, Bral authored and controlled the corporate books, records, minutes of VREG,  
7 and filed with the State of California any compliance documents related to VREG.

8           35. Plaintiffs are informed and believe, and based on such information and belief  
9 allege, that at no time did Bral issue and deliver to Beitler shares of stock in VREG in Beitler's  
10 name.

11          36. Plaintiffs are informed and believe, and based on such information and belief  
12 allege, that Bral formed a de jure corporation by the filing of Articles of Incorporation for  
13 VREG, but failed to document Beitler's rights under VREG as an shareholder, officer and  
14 director of VREG as agreed to in the Initial VREG Agreement, including, but not limited to, the  
15 execution of bylaws, appointment of directors and officers, first meeting of shareholders and  
16 directors, and other corporate formalities establishing Beitler's rights in VRGE. At all times  
17 material hereto Bral failed to disclose to Beitler any of the aforementioned acts or omissions.

18          37. Plaintiffs are informed and believe, and based on such information and belief  
19 allege, that Bral, without disclosure to and unbeknownst to Beitler, and in violation of the Initial  
20 VREG Agreement, prepared corporate documentation that reflected Bral as the sole director,  
21 officer and shareholder of VREG.

22          38. Plaintiffs are informed and believe, and based on such information and belief  
23 allege, that Bral did not disclose or provide to Beitler documentation regarding the formation of  
24 VREG or documentation reflecting its annual compliance, if any, with corporate obligations,  
25 including meetings of its directors and shareholders.

26          39. Sometime after the formation of VREG and after Bral and Beitler entered into the  
27 VREG Property Management Agreement, Bral asked Beitler to place Beitler's broker's license  
28 with VREG, so that VREG could operate as a corporate real estate brokerage, including handling

1 the leasing and sales for the SPEs. Beitler agreed to place his real estate broker's license with  
2 VREG, subject to the following conditions to which Bral orally agreed ("Brokerage  
3 Agreement"):

- 4 A. Observance of the laws of the State of California, including any  
5 administrative regulations or requirements of the California Bureau of  
6 Real Estate ("CBRE"), regarding such real estate brokerage matters;
- 7 B. VREG is to be operated and managed as an affiliate of BCRS and  
8 regulated by BCRS;
- 9 C. All commissions are to be split equally between broker and agent, with the  
10 broker commission to be paid to BCRS for use by VREG of Beitler's real  
11 estate broker's license;
- 12 D. Nothing shall modify or affect the SPEs' respective Operating Agreements  
13 with regard to their provisions appointing BCRS as listing broker of the  
14 SPEs and the commission percentage payable to BCRS as provided  
15 therein;
- 16 E. All leasing and sales transactions are to be managed and administrated by  
17 BCRS as the listing broker, consistent with the SPEs' respective Operating  
18 Agreements;
- 19 F. Any signs or marketing material listing any of the SPEs are to name  
20 BCRS as the listing broker; and
- 21 G. All payments and expenses advanced by BCRS to VREG, Bral or any of  
22 the agents acting under VREG ("Expense Advances"), including, but not  
23 limited to, for errors and omissions insurance, are to be reimbursed to  
24 BCRS.

1           40. Notwithstanding that BCRS had maintained an existing office in Orange County,  
2 California, VREG also located its office in Orange County, California. The co-existence of both  
3 offices was not viewed as duplicative or overlapping, because, among other factors, VREG had  
4 already existed not as a brokerage but to provide property development and property  
5 management services to the SPEs.

6           41. Subsequent to the formation of VREG, Bral indicated that he required the money  
7 earned from the SPEs, including, but not limited to, the property management fees and any  
8 commissions, for both the continued operation and management of VREG and his personal use.  
9 Bral orally proposed, and Beitler orally agreed, to defer receiving any money from VREG that  
10 would otherwise be distributed to Beitler and BCRS, and that Bral would subsequently account  
11 for, allocate and pay to Beitler and BCRS the excess money received by Bral that would  
12 otherwise have been paid to Beitler and/or BCRS ("Deferral Agreement"). Plaintiffs are  
13 informed and believe, and based on such information and belief allege, that the Deferral  
14 Agreement was restated and ratified periodically and annually by Beitler and Bral each year after  
15 the VREG Property Management Agreement, including calendar year 2013.

16           42. The Initial VREG Agreement, the VREG Property Management Agreement, the  
17 Brokerage Agreement and the Deferral Agreement are hereinafter referred to collectively as the  
18 "VREG Agreements".

19           43. At all times herein mentioned, Beitler was licensed by CBRE as a real estate  
20 broker.

21           44. At all times herein mentioned, VREG listed Beitler as the "Licensed Officer".  
22 CBRE License Page – VREG it states Beitler as the Licensed Officer and listing Mariko C.  
23 Beaver ("Beaver") and Jon Capristo ("Capristo") as sales persons. Bral is not named as a  
24 salesperson under VREG. Plaintiffs are informed and believe, and based on such information  
25 and belief allege, that Bral, prior to January 18, 2014, was not listed as salesperson under the  
26 VREG.

27           45. Beaver and Capristo were individuals hired directly by Bral to work with Bral at  
28 VREG.

1       46. Plaintiffs are informed and believe, and based on such information and belief  
2 thereon allege, that at all times herein mentioned prior to June 5, 2013, Bral was licensed by the  
3 CBRE as a real estate agent.

4       47. In or about June 5, 2013, Bral was licensed by the CBRE as a real estate broker.

5       48. Bral, on or about October 8, 2013, formed BRAI; however, Plaintiffs are  
6 informed and believe, and based on such information and belief allege, that BRAI did not  
7 commence operations concurrent with its formation.

8       49. On January 9, 2014, Beitler sent Bral an email ("January 9th Email"). The  
9 January 9th Email related, among other things, Beitler's requests and demands for: (i) an  
10 accounting of VREG management fees earned by VREG and particularly with regard to the  
11 SPEs; (ii) payment of BCRS's share of the management fees; (iii) an accounting of all brokerage  
12 fees earned by VREG and payment to BCRS of any brokerage fees; (iv) removal of signs posted  
13 on the SPE properties that stated VREG as the broker or representative of the SPEs and  
14 replacement of those signs with BCRS signs; (v) repayment of any money advanced by BCRS  
15 on behalf of VREG, including, but not limited to, premiums related to VREG for errors and  
16 omissions insurance; and (vi) the cessation of the continued use of BCRS's broker's license.

17       50. Neither Bral nor VREG responded to the January 8th Email.

18       51. On January 24, 2014, as a follow-up to the January 9th Email, Beitler sent Bral an  
19 email ("January 24th Email") that related and reiterated, among other things, Beitler's requests  
20 and demands for: (i) an accounting and tender of payment for management fees VREG received  
21 from the SPEs; (ii) an accounting of commissions VREG received through the use of BCRS's  
22 California real estate broker license; (iii) the removal of VREG broker signs and the replacement  
23 of such signs with BCRS signs as required under the SPE operating agreements; (iv) the  
24 cessation of VREG's use of BCRS's California real estate broker license; and (v) the repayment  
25 of fees and expenses that BCRS advanced for VREG.

26       52. Bral did not respond to the January 24th Email.

27       53. The license page for BRAI listed on the CBRE website, as of January 28, 2014,  
28 set forth Bral as the Licensed Officer and provided that the corporate license was issued on

1       January 28, 2014. The CBRE web page for BRAI does not list any salespersons. Plaintiffs are  
2 informed and believe, and based on such information and belief allege, that BRAI commenced  
3 business in or about January 2014 and that both Capristo and Beaver then started doing work for  
4 BRAI.

5       54.      BRAI's own web page states that:

6            "BRAI offers services to cover all Commercial Real Estate, with a specialty in Medical  
7 and Office. With over 25 years of experience in the industry and an inventory exceeding \$100  
8 million dollars ..."

9  
10       55.     At no time did Bral announce his resignation, separation or disassociation from  
11 VREG, or the formation of BRAI. On or about January 12, 2014, Plaintiffs discovered the  
12 formation of BRAI through an internet search.

13       56.     At no time did Bral announce the termination or cessation of work by VREG.

14       57.     Plaintiffs are informed and believe, and based on such information and belief  
15 allege, that BRAI now occupies the same business office as VREG and utilizes the same  
16 telephone numbers.

17       58.     Plaintiffs are informed and believe, and based on such information and belief  
18 allege, that Bral transferred to BRAI all of the business of VREG, including the brokerage,  
19 property development, and property management.

20       59.     Plaintiffs are informed and believe, and based on such information and belief  
21 allege, that Bral, Capristo and/or Beaver have ceased working for VREG.

22       60.     At no time did Bral, Capristo and/or Beaver indicate they resigned, terminated or  
23 ceased doing work for VREG.

24       61.     At no time did Bral communicate to Beitler the status of VREG as an ongoing  
25 operating entity, as it relates to BRAI and/or as it relates to the SPEs.

26       62.     Plaintiffs are informed and believe, and based on such information and belief  
27 allege, that there is no agreement between VREG and BRAI regarding a transfer of business by  
28 VREG to BRAI or the assumption by BRAI of VREG's work. Plaintiffs are further informed

1 and believe, and based on such information and belief allege, that all such actions by Bral with  
2 regard to the transfer of VREG assets were done without the required corporate approval,  
3 including Beitler's approval as a putative shareholder of VREG pursuant to the Initial VREG  
4 Agreement.

5 **FIRST CAUSE OF ACTION**

6 **FOR BREACH OF FIDUCIARY DUTY**

7 **(By Beitler Against Bral and Does 1 through 50)**

8 63. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to  
9 62, inclusive, of this Complaint, and the same are incorporated herein by this reference as though  
10 set forth in full herein.

11 64. Beitler is informed and believes, and based on such information and belief  
12 alleges, that at all times material hereto, Bral was a shareholder, corporate officer, and director of  
13 VREG.

14 65. Beitler is informed and believes, and based on such information and belief  
15 alleges, that a fiduciary relationship existed between Beitler and Bral, which Bral established  
16 through the following: (A) the formation of VREG, in accordance with the Initial VREG  
17 Agreement; (B) each of the agreements, as herein alleged, that Bral entered into with Beitler in  
18 which he promised to faithfully and in good faith perform and in which as an officer and director  
19 of VREG he was obligated to perform in the best interests of VREG, including, but not limited  
20 to, the VREG Agreements; and (C) Bral's position as a director and corporate officer of VREG.

21 66. Beitler is informed and believes, and based on such information and belief  
22 alleges, that Bral breached his fiduciary duties to Beitler by, among other things, the following:  
23 (A) failing to issue shares in VREG to Beitler; (B) failing to properly document VREG's  
24 corporate documents consistent with each of the VREG Agreements; (C) failing to account for  
25 VREG revenue; (D) failing to distribute VREG revenue; (E) failing to pay money owed to  
26 Beitler and/or to BCRS for Beitler's benefit; (F) misappropriating VREG revenue otherwise to  
27 be allocated to Beitler or to BCRS for Beitler's benefit; (G) failing to act in accordance with the  
28 State of California and CBRE laws and regulations regarding a California corporate real estate

1 brokerage; (H) failure to act in the best interests of and in loyalty to the SPEs and VREG and  
2 failure to place those interests before his own self-interest; (I) diverting and misappropriating  
3 VREG business and assets to BRAI in breach of the VREG Agreements, without authority as  
4 provided in the SPEs' operating agreements and without consideration or value; and (J) failing to  
5 act in accordance with his duties and obligations as a corporate officer and director of VREG.

6 67. As a proximate results of Bral's breach of fiduciary duty as herein alleged, Beitler  
7 has suffered damage in amount to be determined according to proof at the time of trial, but in no  
8 event less than this Court's minimum amount for unlimited civil jurisdiction.

9 68. Bral's breaches of his fiduciary duty to Beitler are continuing, willful and  
10 wrongful, and malicious, and done in conscious disregard for Beitler's rights. Beitler is therefore  
11 entitled to an award of punitive damages against Bral in amount according to proof.

12 **SECOND CAUSE OF ACTION**

13 **FOR ACCOUNTING**

14 **(By Plaintiffs Against Bral, VREG, BRAI and Does 1 through 50)**

15 69. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to  
16 68, inclusive, of this Complaint, and the same are incorporated herein by this reference as though  
17 set forth in full herein.

18 70. The amount of money due to Plaintiffs as result of Defendants' conduct as  
19 aforesaid is not fully known to Plaintiffs, and cannot be precisely ascertained without an  
20 accounting of the money and assets used and/or received by Defendants with regard to Plaintiffs,  
21 and each of them.

22 71. By reason of the facts herein alleged, Defendants have a duty to account to  
23 Plaintiffs, among other things, for all money used and/or received by VREG, all money paid or  
24 distributed to Bral by VREG, all assets and business diverted by VREG to BRAI, and all money  
25 paid or distributed to Bral by BRAI that would otherwise be received or paid to VREG.

26

27

28

**THIRD CAUSE OF ACTION  
FOR UNJUST ENRICHMENT**

**(By Plaintiffs Against Bral, VREG and BRAI and Does 1 – 50)**

72. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to 62, inclusive, of this Complaint, and the same are incorporated herein by this reference as though set forth in full herein.

73. By reason of the acts and conduct of Defendants as alleged herein, Defendants received a benefit and unjustly retained that benefit at the expense of Plaintiffs, and as a result thereof, Defendants have been unjustly enriched in an amount to be determined according to proof, together with interest thereon at the maximum legal rate, but in no event less than this Court's minimum amount for unlimited civil jurisdiction.

# **FOURTH CAUSE OF ACTION**

## **FOR INTENTIONAL MISREPRESENTATION**

**(By Plaintiffs Against Bral and Does 1 – 50)**

74. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to 62, inclusive, of this Complaint, and the same are incorporated herein by reference as though set forth in full herein.

75. At all times material hereto, Bral made a series of representations to Plaintiffs. Plaintiffs are informed and believe, and based on such information and belief allege, that the purpose of such representations was to induce Plaintiffs to enter into the VREG Agreements with Bral.

76. The representations made by Bral, included, among others, the following: (A) the VREG Agreements, and each of them, were binding, ongoing and would be faithfully performed by Bral; (B) VREG would equally divide the revenue between Beitler and Bral from the property management fees paid by the SPEs to VREG, and that Bral would not interfere with BCRS's right to be the real estate broker for the SPEs and its right to commissions therefrom; (C) Bral would not undertake any action with regard to the SPEs either as a manager, managing member or member without Beitler's agreement; (D) Bral would not do, or cause anything to be done,

1 that was in conflict with the requirement of prior approval of Beitler as broker of VREG and as  
2 otherwise required by CBRE and the laws and regulations of the State of California for corporate  
3 real estate brokerages; (E) Bral would not do, or cause anything to be done, whether directly or  
4 indirectly, that would interfere with BCRS's rights of broker representation and to commissions  
5 relative to any of the SPEs; (F) Bral would repay any money received by Bral in excess of his  
6 equal share; and (G) BCRS would receive its broker commission from any commission  
7 appropriately earned by VREG (collectively, the "Representations").

8       77. Each of the Representations made by Bral was in fact false.

9       78. Plaintiffs are informed and believe, and based on such information and belief  
10 allege, that Bral did not intend to, among other things: (A) divide the revenue from property  
11 management and commissions with Beitler, individually and on behalf of BCRS; (B) faithfully  
12 perform each of the VREG Agreements; (C) properly pay to Beitler his broker share of any  
13 commission related to non-BCRS commission matters; and (D) not interfere with BCRS's rights  
14 with regard to any of the SPEs, including the payment of any commissions.

15       79. Plaintiffs are informed and believe, and based on such information and belief  
16 allege, that Bral's real intent was to use the revenue received by VREG to develop the  
17 infrastructure of VREG for his singular benefit as an ongoing real estate commercial brokerage  
18 without being licensed as a broker under the laws of California and without allocating to Beitler,  
19 whether individually or on behalf of BCRS, an equal distribution and/or other payments.

20       80. Plaintiffs are informed and believe, and based on such information and belief  
21 allege, that Bral breached his duty in making the Representations, since Bral did not intend to  
22 reasonably perform under the terms of any of the VREG Agreements. Plaintiffs are further  
23 informed and believe, and based on such information and belief allege, that Bral was aware that  
24 he acted contrary and/or in breach of the VREG Agreements notwithstanding that Bral  
25 reaffirmed and ratified each of the VREG Agreements and related to Plaintiffs his purported  
26 intent to faithfully perform of each of the VREG Agreements and did so affirm and ratify each  
27 calendar year, through and including 2013.

28

1       81. Plaintiffs, and each of them, reasonably relied on Bral's Representations and such  
2 reliance was both reasonable and justified, since Bral was both a long standing business associate  
3 and friend of Beitler prior to the formation of VREG and, therefore, Plaintiffs had no reason to  
4 doubt Bral's Representations based on their past history of performance. Plaintiffs had a pre-  
5 existing relationship with Bral that on its face and from past practice validated trust. In addition,  
6 Bral reaffirmed at all times material hereto each of the VREG Agreements.

7        82. Had Plaintiffs known the truth of Bral's Representations and his real intent they  
8 would not have entered into the VREG Agreements, Beitler would not have placed his real estate  
9 broker license with VREG for VREG's use, and BCRS would not have made Expense Advances  
10 for VREG or deferred collection of such advances.

11       83. Plaintiffs did not discover, and were not on notice of, the falsity of Bral's  
12 Representations until in or about October 2013.

13       84. Plaintiffs have been damaged by Bral's failure to perform under each of the  
14 VREG Agreements and his misuse of Beitler's real estate broker license.

15        85. Plaintiffs' reliance on Bral's Representations was a substantial factor in and  
16 proximate cause of harm and damage to Plaintiffs.

17       86. Plaintiffs seeks both general and special damages, including interest at the  
18 maximum legal rate, in an amount according to proof at time of trial, but in no event less than  
19 this Court's minimum amount for unlimited civil jurisdiction.

20        87.      Bral's Representations were false, willful and malicious, and done in conscious  
21 disregard for Plaintiffs' rights. Plaintiffs are therefore entitled to an award of punitive damages  
22 against Bral in amount according to proof.

## **FIFTH CAUSE OF ACTION**

# **FOR NEGLIGENCE MISREPRESENTATION**

**(By Plaintiffs Against Bral and Does 1 – 50)**

26       88. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to  
27       62, inclusive, and paragraphs 74 to 77, inclusive, and paragraphs 81 to 86, inclusive of this

1 Complaint, and the same are incorporated herein by this reference as though set forth in full  
2 herein.

3 89. In making the Representations to Beitler, Bral had a duty to not make any  
4 Representations that were false and did not reflect anything other than his real intent.

5 90. Plaintiffs are informed and believe, and based on such information and belief  
6 allege, that Bral made the Representations without any reasonable grounds or basis for believing  
7 them to be true.

8 91. As a direct and proximate result of Bral's Representations and Plaintiffs'  
9 justifiable reliance thereon, Plaintiffs suffered general and special damages, including interest at  
10 the maximum legal rate, in an amount according to proof at time of trial, but in no event less than  
11 this Court's minimum amount for unlimited civil jurisdiction.

## 12 SIXTH CAUSE OF ACTION

### 13 FOR BREACH OF ORAL CONTRACT

14 (By Plaintiffs Against Bral and Does 1 – 50)

15 92. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to  
16 68, inclusive, of this Complaint, and the same are incorporated herein by this reference as though  
17 set forth in full herein.

18 93. Each of the VREG Agreements is an oral contract.

19 94. Plaintiffs have performed all of their obligations under the VREG Agreements  
20 except those excused, waived, or discharged by Defendants' conduct.

21 95. In or about November 2013, Bral breached the VREG Agreements, by among  
22 other things, failing to perform those promises and undertake those actions as set forth in  
23 paragraphs 31, 32, 39, 41, 75 and 76 herein.

24 96. As a result of Bral's breach of the VREG Agreements, Plaintiffs have suffered  
25 general and compensatory damages, and incidental and consequential damages, in an amount  
26 according to proof, including interest at the maximum legal rate, but in no event less than this  
27 Court's minimum amount for unlimited civil jurisdiction.

28

**SEVENTH CAUSE OF ACTION  
FOR BREACH OF ORAL CONTRACT**

(By BCRS Against Bral, VREG and Does 1 – 50)

97. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 to 68, inclusive, of this Complaint, and the same are incorporated herein by this reference as though set forth in full herein.

98. BCRS orally agreed to make Expense Advances on behalf of Bral, VREG and each of the agents acting under VREG, including, but not limited to, errors and omissions coverage, and Bral and VREG orally agreed to reimburse BCRS for all Expense Advances (“Expense Advance Agreement”). The Expense Advance Agreement is part of the Brokerage Agreement.

99. BCRS made Expense Advances on behalf of Bral, VREG and each of the agents acting under VREG, and BCRS has performed all of its obligations under the Expense Advance Agreement except those excused, waived, or discharged by Defendants' conduct.

100. Bral and VREG requested that BCRS defer collection of their repayment of the Expense Advances to a later date, since neither Bral nor VREG purportedly could afford to absorb such costs. BCRS agreed to defer collection of repayment of the Expense Advances.

101. Notwithstanding that Bral and VREG did not pay BCRS for such Expense Advances, Bral and VREG, for each calendar year in which Expense Advances were made, ratified and affirmed their obligations to BCRS under the Expense Advance Agreement to repay all outstanding Expense Advances, including those from prior years. Bral and VREG in calendar year 2013 again ratified and reaffirmed their obligations to BCRS under the Expense Advance Agreement to repay all outstanding Expense Advances.

102. In or about November 2013, Bral and VREG breached the Expense Advance Agreement by failing to repay to BCRS outstanding Expense Advances.

103. As a result of Bral's and VREG's breach of the Expense Advance Agreement, BCRS has suffered general and compensatory damages, and incidental and consequential

1 damages, in an amount according to proof, including interest at the maximum legal rate, but in  
2 no event less than this Court's minimum amount for unlimited civil jurisdiction.

3 **EIGHTH CAUSE OF ACTION**

4 **FOR BREACH OF IMPLIED CONTRACT**

5 **(By Plaintiffs Against Bral and Does 1 – 50)**

6 104. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1  
7 to 68, inclusive, paragraphs 75 and 76, and paragraphs 97 to 103, inclusive of this Complaint,  
8 and the same are incorporated herein by this reference as though set forth in full herein.

9 105. In doing the acts and things hereinabove alleged, Plaintiffs and Bral entered into  
10 an implied contract ("Implied Agreement"), on the terms and conditions as alleged herein,  
11 pursuant to which, among other things, (i) Beitler and Bral would equally share in the  
12 management fees from the SPEs, (ii) BCRS would receive its equal share of brokerage  
13 commissions from any non-SPE transactions by or through VREG, (iii) BCRS would be  
14 reimbursed by Bral for any fees, costs and other Expense Advances on behalf of VREG and Bral,  
15 and (iv) Plaintiffs and Bral would equally share in the commissions earned from the leasing and  
16 sale of the SPEs' properties.

17 106. Plaintiffs performed all of their obligations under the Implied Agreement except  
18 those excused, waived, or discharged by Defendants' conduct.

19 107. In or about November 2013, Bral breached the Implied Agreement by, among  
20 other things, failing to perform those promises and undertake those actions as set forth in  
21 paragraphs 31, 32, 39, 41, 75, 76, and 98 herein.

22 108. As a result of Bral's breach of the Implied Agreement, Plaintiffs have suffered  
23 general and compensatory damages, and incidental and consequential damages, in an amount  
24 according to proof, including interest at the maximum legal rate, but in no event less than this  
25 Court's minimum amount for unlimited civil jurisdiction.

26

27

28

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. FIRST CAUSE OF ACTION

- 4 a) General and special damages in an amount according to proof;
- 5 b) Interest at the maximum legal rate; and
- 6 c) Punitive damages according to proof.

7 2. SECOND CAUSE OF ACTION

- 8 a) For an accounting.

9 3. THIRD CAUSE OF ACTION

- 10 a) General and compensatory damages in an amount according to proof;
- 11 b) Incidental and consequential damages according to proof; and
- 12 c) Interest at the maximum legal rate.

13 4. FOURTH CAUSE OF ACTION

- 14 a) General and special damages in an amount according to proof;
- 15 b) Interest at the maximum legal rate; and
- 16 c) Punitive damages according to proof.

17 5. FIFTH CAUSE OF ACTION

- 18 a) General and special damages in an amount according to proof; and
- 19 b) Interest at the maximum legal rate.

20 6. SIXTH, SEVENTH and EIGHTH CAUSES OF ACTION

- 21 a) General and special damages in an amount according to proof; and
- 22 b) Incidental and consequential damages in an amount according to proof; and
- 23 c) Interest at the maximum legal rate.

24 7. ALL CAUSES OF ACTION

- 25 a) For costs of suit incurred herein; and

1 b) For such other and further relief as the court deems just and appropriate.  
2

3 DATED: April 21, 2014  
4

LEVY, SMALL & LALLAS  
A Partnership Including Professional Corporations  
TOM LALLAS

5 By: 

6 TCM LALLAS  
7 Attorneys for Plaintiffs  
8 BARRY A. BEITLER and  
BEITLER & ASSOCIATES, INC., doing  
business as Beitler Commercial Realty Services

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# EXHIBIT B

Honorable Stephen M. Lachs (Ret.)  
ADR SERVICES, INC.  
1900 Avenue of the Stars, Suite 250  
Los Angeles, California 90067  
(310) 201-0010 PH  
(310) 201-0016 FAX

ADR SERVICES, INC.

BARRY A. BEITLER and BEITLER &  
ASSOCIATES INC. dba BEITLER  
COMMERCIAL REALTY SERVICES,

Plaintiffs,

v.

JOHN BRAL; VENTURE REAL ESTATE  
GROUP, a California Corporation; and BRAL  
REALTY ADVISORS, INC.,

Defendants.

ADRS Case No. 16-6581-SML  
LASC Case No. BC 543410

**CORRECTED  
REPORT AND RECOMMENDATION  
ON MOTIONS 101, 201-207**

Stephen M. Lachs,  
Judge of the Superior Court (Ret.)

Hon. Maureen Duff-Lewis  
Dept. 38

On October 5, 2016, you appointed me to be a discovery referee in the above-entitled case. Since that time I have had two conference calls with counsel – one to discuss the case and set up a plan for the filing of various motions, and the second was the call that allowed counsel to argue their motions. In the end, Plaintiff filed one motion and Defendants filed three motions, though one of them consisted of four separate motions. However, we all treated it as one motion.

As you may remember, this case is one of a series of cases litigated between these parties. Mr. Beitler and Mr. Bral were once partners in various real estate businesses and have had a falling out, leading to this litigation.

1 The briefs and exhibits that I reviewed for these motions filled a bankers box. There are  
2 references by both sides as to comments made by judges in the other cases, and actions taken by  
3 other judges in those cases. I will spare you all of this since they are not really relevant to these  
4 discovery motions. Either the parties are doing what they are required to do in this case, or they  
5 are not.

6  
7 The parties numbered their motions to make things easier. The plaintiff used the 100 series and  
8 the defendants used the 200 series.

9  
10 The second conference call, in which the motions were argued, occurred on December 15, 2016.  
11 Messrs Lallas and Jordan appeared for the Plaintiff and Messrs Chapman and Hoesly appeared  
12 for Defendants. Plaintiff had a court reporter present.

13  
14 We began our conference call with argument concerning Plaintiff's motion, which was Motion  
15 #101.

16  
17 This motion seeks an order to compel Defendant Bral to produce certain documents, the  
18 imposition of monetary sanctions, and an order that would lead to terminating sanctions as to all  
19 defendants if there was a further failure to comply with discovery obligations.

20  
21 This case involves allegations that Bral transferred money to entities which he controlled, which  
22 money should have been shared with Beitler. Bral used QuickBooks for his basic accounting.  
23 The information which you enter into QuickBooks and which shows up on your computer, is  
24 called either raw data or native files. From that data, a person can produce various reports.  
25 While Bral has produced reports for Beitler, he, Beitler, is seeking the raw data from the  
26 computer. At this point there is no question that the raw data exists and that it is able be  
27 produced.

28 ///

1 Bral has taken the position that Beitler never requested the raw data in his discovery motions  
2 and that the Court never ordered that they be produced.

3  
4 On July 14, 2016, this Court ordered as follows:

5  
6 "The court is informed that parties meet (sic) and conferred and agreed after deposition  
7 of defendant John Bral that the following documents would be produced as reflected in exhibit  
8 of declaration of Christian Jordan which is dated June 02, 2016 letter addressed to Mr.  
9 Chapman.

10  
11 Court orders compliance with production as reflected in exhibit 8 without objection by  
12 July 26, 2016."

13  
14 Thus we should look at the letter of June 2<sup>nd</sup>, which was Exhibit 8, to see what was ordered  
15 produced by the Court.

16  
17 In that exhibit, at the bottom of the first page, you find Request for Production No. 1. The  
18 status, which is what the parties agreed to and which was ordered produced by the Court, says,  
19 "Bral will produce all responsive documents not already produced, including, by way of  
20 example and without limitation, general ledgers, QuickBooks reports, check registers, and cash  
21 receipts and disbursement ledgers."

22  
23 The language was clear – Bral was to produce all responsive documents and the brief list gave  
24 examples but did not limit what was to be turned over to just those items. Clearly The  
25 QuickBook native files would fall under this request.

26  
27 At the July 14<sup>th</sup> hearing, the Court ordered Plaintiff to give notice. Notice was personally  
28 served and faxed on July 21, 2016. In addition, Plaintiff e-mailed a letter to counsel for

1 Defendants in which Plaintiff took pains to point out that the raw data, or native files, were  
2 required to be produced. Obviously Mr. Jordan, for Plaintiff, had no obligation to spell out for  
3 Defendant just what "all responsive documents" might include, but he did. And, in this letter, he  
4 states that, "QuickBook files, including native files, were also repeatedly referenced in the  
5 Application the Court granted today and in the Jordan Declaration in support thereof."

6  
7 There is no evidence that at any time after receipt of that letter, Defendant ever contended that  
8 Jordan was wrong, and that native files were not required to be produced. That is, until  
9 Defendant filed his opposition to Motion 101 in which he states on page 8, "**Importantly, there**  
10 **was no mention of the raw data!** (his emphasis). It simply was never discussed or there would  
11 have been a reference to it. Because it was not discussed, it need not be produced. Even the  
12 Court noted that, including in the October 4 minute order "The 'issue' of "raw" QuickBooks  
13 data appears to be new and not argued before."

14  
15 I do not know the context of the Court's comment, but it was certainly not a statement that  
16 Defendant need not produce the raw data. Had Defendant wanted to, in the discussions that  
17 resulted in Exhibit 8, he could have insisted that production be limited to only those documents  
18 listed. Instead, he agreed that the list was just a list of examples and that he was required to  
19 produce everything, whether in the list of examples or not. And he certainly knew for months  
20 that Plaintiff was seeking the raw data. At the least, after Mr. Jordan's August 12<sup>th</sup> e-mail, he  
21 could have cleared this up with Mr. Jordan, or, at the most, sought the Court's ruling as to  
22 whether it was required to be produced.

23  
24 I would recommend that the Court order Mr. Bral to produce the raw data from QuickBooks.

25  
26 In addition, as a safety precaution, Defendant should be ordered to provide a copy of the same  
27 raw data under seal to the Court. That way there will be a copy available in the future if either  
28 side contends that the other side manipulated the data.

1 Both the copy of the data for Plaintiff and that for the Court should be produced within 10 days  
2 of the Court's order.

3  
4 Plaintiff also requested tax returns for VREG and BRAI for the years 2012, 2013, 2014 and  
5 2015. Defendant's position apparently is that he need only turn over documents that are  
6 physically in his possession. The tax returns appear to be in the possession of his accountant.  
7 Defendant need only instruct his accountant to provide those returns. He should be ordered to  
8 produce the returns within 10 days of the date of the Court's order.

9  
10 Plaintiff requests a triggering provision that would state that if Defendant failed to comply with  
11 the Court's order, terminating sanctions would be imposed. Unfortunately too much can happen  
12 in the world for this type of order. Rather, if Plaintiff feels there has been noncompliance, he  
13 should be able to seek a date for a hearing on an ex parte motion and Defendant should be given  
14 an opportunity at that hearing to explain why he has not complied with the Court's order. If the  
15 Court is satisfied that there was noncompliance and there was no valid reason for it, then  
16 terminating sanctions will be imposed.

17  
18 Finally Plaintiff requests an award of monetary sanctions. It is my recommendation that the  
19 Court award monetary sanctions to Plaintiff. This motion, in my opinion, was unnecessary and  
20 Plaintiff should not have to pay his attorneys for all of the work involved.

21  
22 **Defendant's Motion #201**

23  
24 This is Defendant's motion to compel the deposition of Plaintiff along with documents  
25 requested in the notice.

26  
27 Plaintiff suspended the deposition of Defendant because of Defendant's failure to produce  
28 documents that were requested of him. The deposition of Plaintiff was noticed after that

1 suspension. It is simply a matter of fairness that a party should not be able to depose the other  
2 party while his own deposition has been suspended as the result of his failure to produce  
3 documents.

4  
5 I recommend that the Court deny Defendant's Motion #201. Further, within 10 days after  
6 completion of Defendant's deposition, the parties shall mutually agree to a date for the  
7 deposition of Plaintiff. If they cannot agree, Defendant will be able to give notice of an ex parte  
8 hearing with the Court in order to set the date.

9  
10 **Defendant's Motion #202 through #206**

11  
12 These motions were handled as one motion.

13  
14 Plaintiff had subpoenaed documents from various third parties who are accountants. These were  
15 motions by Defendant to quash each of these document requests and/or for a protective order.

16  
17 Defendant's position was that the parties had agreed to limit the production of these documents  
18 to a certain year. Yet it is clear that while certain items were limited to a year, the bulk were not.  
19 The motions to quash should be denied as to every category unless there was a written  
20 agreement to limit a particular category to one year.

21  
22 **Defendant's Motion #207**

23  
24 This motion deals with amended responses to written discovery that was to be provided by  
25 Plaintiff. Defendant says that Plaintiff refused to inform Defendant as to when the responses  
26 would be provided and that Defendant was forced to file this motion to compel.

27  
///

28  
///

1 It is agreed by the parties that Plaintiff provided the amended responses three weeks before this  
2 motion was heard, and so it is now just Defendant's request for sanctions that needs be  
3 considered.

4  
5 Apparently Plaintiff provided certain amended responses prior to the filing of this motion, but  
6 some were not provided. As indicated, the parties agree that all amended responses were  
7 provided three weeks prior to the hearing of this motion, but this was a date after the motion  
8 was filed. I accept that Plaintiff's attorney sought to reassure counsel for Defendant that the  
9 remainder of the amended responses would be provided, but no specific date was ever given.  
10 And it should be pointed out that counsel for Plaintiff kept in touch with Defendant during this  
11 time.

12  
13 These parties are involved in some terribly contentious litigation. In such a case, it behooves  
14 counsel to be specific about such things as dates when discovery responses will be provided  
15 since counsel will be aware that the other side will jump on any opportunity to file a motion. In  
16 this instance, there was no way for Defendant to know when he would receive the amended  
17 responses that he was entitled to. It was Plaintiff's burden to provide a specific date and live up  
18 to that date, in order to prevent this very motion.

19  
20 At the same time, it appears that this delay has in no way prejudiced Defendant except for  
21 having prepared the motion.

22  
23 I would recommend that sanctions be awarded to Defendant in a sum to compensate for the  
24 preparation of this motion.

25 ///  
26 ///  
27 ///  
28 ///

1           **In summary, I recommend to the Court as follows:**

2           As to Motion #101

- 3
- 4           1. Defendant Bral be ordered to produce to the Plaintiff, the raw data from QuickBooks
- 5           within 10 days of the date of the Court's order.
- 6
- 7           2. Further, at the same time, Defendant is to provide the same raw data to the Court under
- 8           seal.
- 9
- 10           3. Defendant shall produce tax returns for Defendant VREG and Defendant BRAI for the
- 11           years 2012, 2013, 2014 and 2015 within 10 days of the Court's order.
- 12
- 13           4. The Court should order that at such time as Plaintiff believes that these orders have not
- 14           been complied with, he may set a hearing on ex parte motion so that the Court can
- 15           consider terminating sanctions if the Court finds that these orders have not been
- 16           complied with.
- 17
- 18           5. The Court should order monetary sanctions against Defendant.
- 19
- 20
- 21

22           As to Motion #201

- 23
- 24           1. Defendant's motion should be denied.
- 25
- 26           2. Within 10 days of the completion of Defendant's deposition, the parties shall mutually
- 27           agree to a date for Plaintiff's deposition. If they cannot, Defendant may request a
- 28           hearing upon ex parte notice, in order to have the Court set the date.

1 As to Motions #202 through #206:

- 2
- 3 1. The Defendant's motion to quash should be denied as to every category except those in  
4 which there was a written agreement to limit the discovery to one year.

5

6

7 As to Motion #207:

- 8
- 9 1. The only part of the motion that remains is the request for sanctions and sanctions  
10 should be awarded to Defendant to compensate for the cost of preparing the motion.

11

12 Counsel for Plaintiff should be ordered to prepare an order for the Court that encompasses these  
13 rulings.

14

15

16

17 RESPECTFULLY,

18

19 

20

21 Hon. Stephen M. Lachs, Referee  
22 Judge of the Superior Court, Ret.

23

24

25 Dated: 2/22/17

## **PROOF OF SERVICE**

**State of California  
County of Los Angeles**

I certify that I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 250, Los Angeles, California 90067.

On February 23, 2017, I served the foregoing document described as the **CORRECTED REPORT AND RECOMMENDATION ON MOTIONS 101, 201-207** on the interested parties in this action as follows:

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Mark D. Hurwitz, Esq.  
Christian A. Jordan, Esq.  
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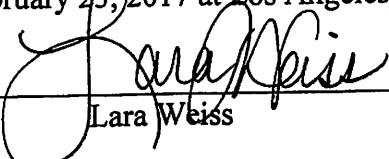
Hon. Maureen Duffy-Lewis  
Dept. 38  
LOS ANGELES SUPERIOR COURT  
OF CALIFORNIA  
111 North Hill Street  
Los Angeles, California 90012  
**VIA U.S. MAIL ONLY**

X **BY U.S. MAIL**, I placed a true copy of the document described above in a sealed envelope and caused such envelope with postage thereon to be placed in the United States mail at Los Angeles, California.

X **BY E-MAIL OR ELECTRONIC TRANSMISSION**: I caused a copy of the document(s) to be sent from e-mail address [lara@adrservices.org](mailto:lara@adrservices.org) to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

X **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 23, 2017 at Los Angeles, California

  
Lara Weiss

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S OBJECTION TO PROOF OF CLAIM FILED BY BEITLER & ASSOCIATES, INC. DBA BEITLER COMMERCIAL REALTY SERVICES [CLAIM NO. 9]; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On October 13, 2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) October 13, 2017, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) October 13, 2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**SERVED VIA PERSONAL DELIVERY/ATTORNEY SERVICE**

The Honorable Scott C. Clarkson  
United States Bankruptcy Court  
Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5130/Courtesy Bin  
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/13/2017  
Date

Lori Gauthier  
Printed Name

/s/ Lori Gauthier  
Signature

**SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

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- **United States Trustee (SA)** ustpregion16.sa.ecf@usdoj.gov
- **Zann R Welch** ecfnotices@ascensioncapitalgroup.com

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